ARE FRANCHISES AFFECTED BY CHANGE OF SOVEREIGNTY?

Questions arising from the annexation of territory resulting from the Spanish War continue to present themselves and demand a solution. The reports of the War Department, the opinions of the Attorney-General, and a very notable volume of reports made to the Secretary by Judge Magoon, Law Officer of the Division of Insular Affairs in the War Department, are full of interest to the student of international relations, as well as to the student of those constitutional privileges and limitations that have heretofore been at once the safeguard of the individual against misgovernment and of the Nation against the strain of passing exigencies. It is one of the great advantages of the American lawyer that he can contribute to the solution of political problems and aid in the development of free and enlightened government, by reason of the admirable doctrine recognized in our jurisprudence that the interpretation of constitutional provisions and their application to the varying vicissitudes of progress lie ultimately with the Judiciary.

It behooves the profession, then, to take a deeper interest than that of a newspaper reader in the many questions which inevitably accompany the vast and sudden enlargement of our national boundaries, bringing under our sovereignty and jurisdiction, and under the protection of our laws, immense territories, including a good number of cities and maritime ports having commercial relations with every part of the globe and a large population hitherto governed under a system of laws materially differing from ours. To this gigantic task, so novel to our experience and complicated by the temporary military occupation of Cuba in the discharge of a trust, voluntarily undertaken and nobly performed, to preserve it and administer its affairs until its own people could establish an orderly government of their own, the officials of our Government have given the most intelligent

and conscientious care. That they should occasionally require the aid of the Bar and of the Judiciary to guide them in their wanderings through such a labyrinth and bring them back to safe bearings, is no criticism of their course, but merely a recognition of mortal limitations. What influence for evil a strained interpretation of governmental privileges may have as a precedent for the future, can perhaps be better seen and pointed out by the disinterested student and observer than by those whose interests are involved in the immediate outcome of the doubtful question, and for that reason the situations created by these new conditions are eminently appropriate subjects for presentation in legal reviews.

The Treaty of Paris provided that the cession of territory should not

> " in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire or possess property in the aforesaid territories, or of private individuals, of whatsoever nationality such individuals may be."

One of the interesting questions having reference to the stipulation just quoted, is the vitality of franchises granted by the Spanish Government within the several territories ceded to the United States by the Treaty.

A few actual instances will best present the difficulties of the situation.

Earliest and briefest is the case of the Australian and China Telegraph Company, a British corporation, which had received from the Spanish Government a guaranty against the landing of other cables and a contract for fixed subsidies, in return for the investment of a large capital outlaid in laying several submarine cables connecting various points in the Philippine Islands with Chinese ports. The cable was cut by the naval forces of the United States, and an application for relief was met by a denial of any right to compensation; but a recommendation by President McKinley that " as an act of equity and comity, provision be made by the Congress for reimbursement of the actual expense incurred in the repair of the cables " resulted in an appropriation as suggested. The further question was presented :

"Whether by international law or usage the United States Government on taking possession of the Philippines, will be bound by the terms of the Company's concession both as to exclusive rights and subsidies."

This, it appears, was submitted to the most eminent counsel available and answered by them in this wise:

"The United States Government is bound to carry out the obligations of the concession, or to give an adequate compensation; if it means to follow the usage";

but beyond this opinion of English counsel no steps seem to have been taken.

A claim made for recognition of a concession to a British Company for a Cuban cable on the ground that the obligations contracted by Spain under those concessions

"become binding on the United States Government on their taking possession of the Islands"

was negatived by the Attorney-General on the ground that our Government was not the successor of Spain,

"but merely an intervening power arranging the succession." "It did not make the contract of concession," adds the Attorney-General, "it is not the beneficiary receiving the benefits said to accrue to the Island from the cables, nor is it the Island, nor the locality to which the obligations are said to be locally attached; neither does it appropriate to itself the revenue of the the Island."

A claim made on behalf of another British corporation, the Manila Railway Company, Limited, for payment by the United States of a subvention guaranteed by the Spanish Government, met with a like fate. It passed through the ordeal of the War Department and its law officer and thence to the Attorney-General and was rejected on the ground that the obligation which the Manila Railway Company was seeking to enforce was a "general debt" and a "personal contract" of the Spanish Government.

"The contract was made by Spain and partly for her own benefit," says the Attorney-General; "it was the indivisible personal contract of Spain and of the concessionaire. All the promises of any contract entered into by the former Government of a province, wrested from it by a victory in war, do not transfer themselves to the new government in defiance of the natural proposition that a man cannot be bound by a stranger's promises. There is an obvious difference between a mere debt for the payment of a loan and an executory contract containing many stipulations to be performed on one side or the other.

"The concessions here in question are executory contracts not concerning the public domain owned by Spain, but containing many personal obligations of Spain and of other parties. They were, and this appears upon their face, concerning instruments with which the Monarchy was to govern more easily and conveniently the subject colonies for the general benefit of Spain as well as their own. The difference between them and what we conceive of as a franchise seems to me to be an obvious one."

The Attorney-General concludes that there is no

"rule of law to the effect that contracts made by the old sovereignty for local and imperial objects shall be obligatory as such upon the new sovereignty," but that "as the provinces of the Philippines have received and will retain the chief benefit from the railroad, the revenues out of which that part of the benefit was to be paid for are now in the hands of their new government, the creditor was induced, very properly, to look to those revenues for that purpose, and, moreover, the railroad was a most necessary piece of property. * * * It would seem to follow that although the contract, as such, has departed with Spain, there is a general equitable obligation upon the provinces to make some fair arrangement with the company, etc."

An application made for the confirmation of a concession for use of water power in Porto Rico was met with the answer that the right of the applicant

"had not been completed by the action or assent of the Crown authorities of Spain; that his right is not vested but inchoate and cannot be made vested by the completion of those requisites prescribed by Spanish law."

The Attorney-General assented, however, to the proposition that

"if at the time the Treaty of Paris took effect the applicant had a complete and vested right to the use of the waters of the River Plata, that right would be respected by the United States."

A like disposition was made upon a concession for the construction of a tramway in Porto Rico, which was left incomplete by the failure to make public bids before the sovereignty of Spain passed away.

On the other hand, in reference to certain cable concessions in Cuba, the exclusive rights conferred upon the companies was recognized, the War Department holding that under the terms of the concession

"as construed by the Spanish authorities, the Cuba Submarine Telegraph Company has the right to object to the use of the Government overland telegraph lines in Cuba for the transmission of messages received by the

French cable at Santiago and destined for the central station at Havana, Cienfuegos or Batabano, and also to object to the transmission over Government Telegraph Lines of messages originating in any of said places and destined for points outside of Hayti over the French cable."

The continuing validity of the exclusive privilege claimed by the Company in Cuba was passed upon by the Attorney-General upon proceedings taken by a rival company to land a cable in Cuba, a proceeding which was endeavored to be sustained by emphasizing the fact that an obnoxious monopoly was otherwise encouraged. Upon this the Attorney-General said:

"The mere fact that the Western Union Telegraph Company is enjoying under a grant of exclusive right what amounts to a monopoly is no reason of itself why it should be deprived of its concession. It is easy to say that monopolies are odious, but there are concessions which amount to monopolies which are lawful and cannot be disturbed except by a violation of public faith.

"Concessions of this kind, which carry with them exclusive rights for a period of years, constitute property of which the concessionary can no more be deprived arbitrarily and without lawful reason than it can be deprived of its personal tangible assets. If, therefore, the Western Union Telegraph Company has an exclusive grant applicable to Cuba for cable rights, which grant has not expired, it would be violative of all principles of justice to destroy its exclusive right by granting competing privileges to another company. It is the function of the Government to prevent as far as possible all infringement of the vested rights of others; vested rights which are property ought not to be taken from any one, except by due process of law. Executive action applied to subjects like this is not due process of law."[1]

Perhaps the most important and the most delicate case presented for consideration relates to certain banks, both in Porto Rico and the Philippines, organized under Spanish law, after fulfillment of all the conditions required by the general statutes of the country, and to which banks were given exclusive privileges for a long term of years. These privileges conferred the exclusive right to issue bank notes in the various localities where the banks were situated, and prescribed the relation of such issue to its paid-up capital, etc., upon terms which might be considered to-day as of great liberality, though scarcely any one will be found to dispute that at the time of the formation of the banks the

[1] XXII Op. Atty. Gen'l, 516, 518.

investment of the requisite capital was not any more than fairly rewarded by the benefits to be derived from the terms granted.

In endeavoring to shape the financial regulations for these new territories, Congress met with these financial establishments asserting their respective rights and privileges, and the question at once arose as to how far these rights or privileges were entitled to respect at the hands of the new sovereignty that dominated the institutions since the cession under the Treaty of Paris.

In a projected Act for the regulation of the currency in the Philippines, which never became a law, an attempt was made to deal with the problem in such a spirit as would give some recognition to the existing banking institutions and yet not materially interfere with the new scheme which Congress was attempting to devise; one section of this proposed law conceded to the bank the right to issue notes equal to the entire paid-up capital of the bank without any deposit of United States bonds to secure circulation, no notes issued earlier than 1884 to be counted as part of such circulation. While this was a concession greatly in advance of the requirements exacted of national banks, it fell far short of the privileges conceded by the terms of the bank's incorporation under Spanish law and ignored its claim to an exclusive right to issue circulating notes and its claims in reference to exemption from taxation.

An interesting correspondence had preceded this attempted legislation, between some members of the Philippine Commission and the Directors of the bank.

Commissioner Ide writes to the Directors (September 24, 1901), that the subject of legislation upon the banking system of the Philippine Islands is likely to be soon taken up and that it is desirable that the regulations should, as nearly as possible, be uniform.

"There is no desire," says the Commissioner, "to infringe upon the privileges of your institution so far as they are compatible with the commercial interests in the government of this Island. It is probable, however, that the Congress of the United States will refuse to consider the privilege of note issue pertaining to your establishment to be exclusive."

Starting with this denial of the value of any rights conferred by the Spanish charter, the Commissioner suggests

a method of compromise which "would not affect the earnings or financial condition" of the bank. To this the Bank Directors replied that under Spanish law the bank had since 1878 possessed the exclusive right of issuing notes for circulation in the Philippines and that the plan outlined by the Commissioner did violence to this and other rights of the bank, and proceeded to quote to the Commissioner the Darmouth College case and the long line of cases that have followed it; but, while insisting upon the legality of the rights which it claims, the bank made a counter proposition to which the Commissioner replies that it would be well for the Directors to refer to the decision of the Veazie Bank *v.* Fenno,[1] wherein, says the Commissioner,

"it was held that it was entirely competent for Congress to impose any such tax as it saw fit, upon the issue of circulating notes by State banks, even though such a tax should be prohibitive by reason of its amount."

To this the Directors return an answer expressing their regret that the effort to arrive at a compromise of what they considered their legal rights

"should have apparently served to suggest the propriety of destroying the exercise of such rights by repression or prohibitory taxation."

It will readily be seen that the controversy as to the rights secured by International Law or by the terms of the Treaty of Paris, is of very great interest as applied to the banking privileges of institutions existing under the jurisdiction of Spain, in the territory over which the United States has now acquired complete sovereignty.

Property rights are certainly protected by the terms of the Treaty and franchises in general have long since been recognized as property rights. In this connection the War Department, through its law officer, discussing franchises for tramways in Porto Rico, sanctions the definition of Angell & Ames and of Judge Thompson; to wit, a franchise is a special privilege conferred by governments on individuals and which does not belong to the citizens of the country generally by common right. Franchises spring from contracts between the sovereign power and private citizens, made upon a valuable consideration for purposes

[1] (1869) 8 Wall. 533.

of public benefit as well as of individual advantage. Why, then, should not the franchises lawfully conferred upon banks under Spanish authority be respected by the new sovereignty under whose jurisdiction they have passed?

Even if such franchises were questionable property rights under our law, it has been repeatedly held that their attributes as property should be tested under the Spanish law from which they were derived.

"We have often held," said the Supreme Court in United States *v.* Hanson,[1] "that the authorities of Spain were authorized to grant the public domain, in accordance with their own ideas of the merits and considerations presented by the grantee; and that our powers extended only to the inquiry, whether in fact the grant had been made; and its legal effect when made, in cases where the law by implication introduced a condition, or it was peculiar in its provision." "The same evidence that was accorded to the return of the surveyor-general by the Spanish Governor, before the cession, is due to it by the courts of this country."

"It was the desire of the United States in carrying out the purposes of the Treaty of Guadalupe Hidalgo,"

says the Supreme Court, in U. S. *v.* Anguisola,[2]

"to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security *to all just rights which could have been claimed from the government they superseded.*"

This same rule of consulting the laws of the country from which the rights flow, as a criterion of their value is again upheld in Townsend *v.* Greeley,[3] and in United States *v.* Turner[4], where the Court says:

"Undoubtedly the validity and effect of both of these instruments depend altogether upon the laws, ordinances, and usages of the Spanish Government, prevailing in the province of Louisiana at the time they were made; and it is the duty of the court to expound them accordingly."

And as late as 171 U. S. 220, in the case of Ely's Administrators *v.* U. S., the Court says, at page 234:

"This grant was one which at the time of the cession in 1853 was recognized by the Government of Mexico as valid, and, therefore, one which it was the duty of this Government to respect and enforce."

Under our own jurisprudence such franchises have been

[1](1842) 16 Pet. 196, 198, 200. [2](1863) 1 Wall. 352.
[3](1866) 5 Wall. 326. [4](1850) 11 How. 663,

repeatedly recognized as property. We have seen above a quotation from the Attorney-General acknowledging the the existence of that character of property, and on a more recent occasion the Attorney-General, having to pass upon the protection due to a patent issued in the Philippine Islands, lays down this rule, that, although

"the patent is for something we should not call a patentable invention and should not issue a patent to protect, yet, under the treaty, the United States must respect it, and that the objection that a monopoly is thereby created is not sufficient to justify any different interpretation of the treaty." (XXII, 617.)

What other objections can be made to the claim for protection put forth by these banks?

The Attorney-General has suggested that a personal contract attaching to a particular personality is not entitled to protection from the superseding government, because the benefit of such contract cannot pass to another, any more than its burdens. But it is evident that many such contracts may enure to the benefit of a superseding government; mail contracts, contracts for the furnishing of supplies, for maintaining toll bridges, keeping open channels of navigable streams, all of which might well call for the investment of large capital, only properly remunerated by long and exclusive privilege, are a few examples of contracts that may enure to the benefit of a succeeding government and should be among the burdens which that government takes when it compels the cession of territory.

"If the United States were not content to receive the territory, charged with titles thus created," says the Supreme Court, "they ought to have made, and they would have made, such exceptions as they deemed necessary."[1]

It may be admitted that some governmental contracts are of a character which would not pass to the new government; for instance, if the subject of the contract were such that it applied exclusively to the form of government which had been superseded, *i.e.*, to contribute to the Civil List of the Queen; or, if it were entirely disconnected with the ceded territory, such as a tax or contribution of any character for the maintenance of highways or bridges in the

[1] U. S. *v.* Clarke (1834), 8 Pet. 436.

peninsula and not touching the Philippines. But where, as in the instances mentioned above, the contract or franchise is of such a character that it is not necessarily confined to the personal benefit of the granting sovereign, it cannot fall under the ban of a personal contract, dying with the party making it.

This idea of a personal contract which does not pass to the succeeding government may be tested by the converse of the proposition: Would the right of the Spanish Government to enforce the obligation assumed by the grantee of such a contract pass to the United States Government?

For instance, in the case of a franchise to maintain a toll bridge, would not the United States Government have the same right the Spanish Government had to compel its maintenance or to compel the continuance of a service under a mail contract, or a contract to keep open the channel of a navigable river?

This test may be applied to the Filipino Bank, which under its charter is bound to make certain stipulated loans for the benefit of the Philippine treasury. Why would not the United States Government have the same right that the Spanish Government possessed to compel compliance with this provision and to forfeit the franchise in case of a violation of or non-compliance with such requirement?

Again it has been suggested that an executory contract with reciprocal obligations does not attach to a superseding government, the obligations being personal.

If these obligations are in the nature of a governmental franchise, or privilege, or right which constitutes property, there seems to be no reason, because it is executory and continuing, that it should not be included under the general designation of "property rights," which the Treaty stipulates shall not suffer any hindrance or diminution.

Another objection that has been suggested, is that the function of a bank is a governmental function, the agency for which expires with the government which created it.

But a governmental function may be made the subject of a property right. It has been made a governmental function to carry the mails; but a contract to do that for a given term of years is surely valuable property, and why should the agency adopted for its performance in due form of law

by an expiring government be ignored by its assignee and successor?

Again it has been urged that it is against the policy of our Government to authorize the issue of circulating notes by other than National Banks, and that laws, or franchises, or contracts of any kind in contravention with the policy of the acquiring government, perish with the extinction of the sovereignty of the ceding government. This rule has never been applied except in cases where the rule or statute appealed to in support of the concession is repugnant to the *fundamental policy* of our Government, such as are inconsistent with the very theory of our political existence. But the rule can have no application to temporary methods of performing certain functions of administration; there is nothing contrary to any fundamental element of our Government in the issue of bank notes by other than National Banks. It is simply not in accord with our present policy; but State Banks were for a long period the only sources of paper currency, and the United States Bank was recognized as the agency for the financial operations of the Government.

But, assuming for the moment that the terms of such a franchise are inconsistent with our present financial legislation, and difficult, if not impossible, to bring into unison with our regulations for a uniform and stable currency; it is not a sufficient reason to absolve from the obligation of a contract that it is difficult and annoying to carry it out; the obligation is not the less entitled to respect. The right which is violated by ignoring it, is a property right, and there would seem to be but one avenue of liberation, to wit, the exercise of the right of eminent domain, the appraisal of the property right which it is desired to absorb or extinguish and a fair compensation for it.

A quotation from Mr. Webster's argument touching the franchise to the Charles River Bridge Company will enforce this view:

"The legislature may grant franchises. This is done by its sovereign power. What may it do with those franchises? What power has it over them after they have been granted? It may do just what it is limited to do, and nothing more. It is restrained by the same instrument which gave it existence, from doing more. The question is, what restrictions on this

power are found in the constitution of Massachusetts; and by a reference to it, the limitation of legislative powers will be found. The power may be exercised by taking property, on paying for it. In the constitution, it is expressly declared that property shall not be taken by the public, without its being paid for. It is incident to the sovereignty of every government, that it may take private property for public use; but the obligation to make compensation is concomitant with the right." [1]

The suggestion made by Mr. Commissioner Ide, that the power of taxation could be legally employed to destroy the unquestioned value of the franchise, is certainly an arbitrary method of evading the obligation to make compensation which, as Mr. Webster tells us, is concomitant with the right to take private property.

And it is but one instance of very many of the misapplications of that celebrated dictum, that the power to tax is the power to destroy. More than once this dictum has been taken to indicate that a proper use of taxation is destruction, whereas nothing can have been further from the broad and equitable mind from which the dictum proceeded. It was the epigrammatic announcement of an unquestioned truth, that the power vested in government to maintain itself by the imposition of taxes was in no wise restricted, even if the application of the tax wrought the destruction of property. If the maintenance of the Government was dependent upon a heavy tax, no tax could be so heavy as to be unjust. It is a far cry from the assertion of that simple truth to the claim now made that the power of taxation, instead of being a preservative, is in reality a proper instrument of destruction. This might well be the subject of more extended comment, to which I cordially invite some of your contributors.

That banking is not a necessary agency of government, and that it is a universal right which may be regulated, but cannot be ignored, has been long since established.

Singularly enough, this was illustrated by another incident to the transfer of the sovereignty of the Philippines. The Hong Kong and Shanghai Banking Corporation is a British bank, doing business at Manila. The Philippine Commission passed an act on November 28, 1900, requiring every bank in the Philippine Islands to accept deposits

[1] (1837) 11 Pet. 535.

in various kinds of currency, and providing punishment for violation of such requirements by fine and imprisonment. The bank protested that this was an undue interference with its rights, and the War Department declined to hear the complaint on the ground that banks and banking are subject to legislative regulation and control. In the opinion given by the Law Officer of the War Department we find this statement:

"Banking is a lawful calling, and the right to pursue a lawful calling may be a valuable property right. A well-known author in his treatise on banking uses the following language: 'At common law, the right of banking pertains equally to every member of the community. Its very exercise can be restricted only by legislative enactment (1 Morse on Banks, Sec. 13).' The business of banking by reason of its very intimate relations to the fiscal affairs of the people and the revenues of a State is and has ever been considered the proper subject of control and strictly within the domain of the international police power of every State."[1]

In the Veazie Bank *v.* Fenno [2] a tax upon the bank, which was incorporated under a charter by the State of Maine, was sustained on the ground that the franchise of a bank was property. The Court says (p. 547):

"But it cannot be admitted that franchises granted by a State are necessarily exempt from taxation; for franchises are property, often very valuable and productive property; and when not conferred for the purpose of giving effect to some reserved power of a State, seem to be as properly objects of taxation as any other property."

In that case the power to issue bank bills was assimilated to the power of a Railroad Company to issue freight receipts, bills of lading or passenger tickets, although the exemption from taxation was sought upon the ground that the bank had been chartered by the State for the purpose of carrying into effect part of the governmental powers of the State and that it was a governmental agency which should not be taxed.

"It seems difficult," says the Court, "to distinguish the taxation of of notes issued for circulation from the taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both, as we think, may properly be made contributory to the public revenue" (pp. 547, 548).

[1] State *v.* Woodmanse, (N. Dak. 1890) 46 N. W. 970; Magoon, pp 258, 259.

[2] (1869) 8 Wall. 533.

A bank charter was also the subject under discussion in Planters' Bank *v.* Sharp,[1] and the Court says:

"A bank charter which gave the Planters' Bank the power to receive money on deposit and discount bills of exchange and notes and make loans was held to be a contract and violated by a further law declaring that it should not be lawful for any bank in the State to transfer any note, bill receivable or other evidence of debt" (pp. 319, 320).

The right and privilege to do banking and to issue notes is in no wise a necessary government function. Indeed, many of the wisest economists doubt whether it is a proper government function, and it is by no means certain whether it is wise for the Government to go beyond affixing its certificate to the purity and weight of coin, or, if need be, to the safety and sufficiency of notes secured by deposits made with it.

But surely it is no more a governmental function than the maintenance of the highways of commerce, post roads, mail routes, etc., or toll bridges across navigable streams, and all of these functions, it is universally conceded, are the proper subjects of franchises and contracts which are recognized in law as valuable property rights.

The case of the West River Bridge[2] sustained the charter rights of the Bridge Company as property and the charter as a contract between the State and the Company, which, like all other private rights of property, was sacred against invasion, but subject to condemnation under the right of eminent domain.

The Binghamton Bridge Case[3] not only upheld a bridge contract as property, but sustained the exclusive right to maintain such a bridge within an indicated distance, as an inviolable contract, preventing the construction, under the authority of the State, of any other bridges within the limits fixed, for a period which was itself unlimited. The Court there says:

"The constitutional right of one legislature to grant corporate privileges and franchises, so as to bind and conclude a succeeding one, has been denied."

That seems to be the position with those who insisted that the Government of Spain could not grant a corporate

[1] (1847) 6 How., 300. [2] (1847) 6 How. 507. [3] (1865) 3 Wall. 51, 63.

privilege and franchise so as to bind its successor in the government of the realm. As to this contention the Court says:

"We have supposed, if anything was settled by an unbroken course of decisions in the Federal and State courts, it was that an act of incorporation was a contract between the State and the stockholders. All courts at this day are estopped from questioning the doctrine. The security of property rests upon it, and every successful enterprise is undertaken in the unshaken belief that it will never be forsaken."

"It received its ablest exposition in the case of Dartmouth College *v.* Woodward, which case has ever since been considered a landmark by the profession and no court has since disregarded the doctrine, that the charters of private corporations are contracts, protected from invasion by the Constitution of the United States."

In the more recent case of Pearsall *v.* Great Northern Railway Company,[1] these doctrines are again reaffirmed, and after citing the Dartmouth College Case as laying down the broad propositions in regard to the inviolability of charters, the Court continues:

"Subsequent cases have settled the law that, wherever property rights have been acquired by virtue of a corporate charter, such rights, so far as they are necessary to the full and complete enjoyment of the main object of the grant, are contracts, and beyond the reach of destructive legislation."

In view of the particular exemptions from taxation accorded to colonial banks under the Spanish law, as a necessary inducement to the investment of capital in such remote regions, and in view of Commissioner Ide's suggestion, that under the protection of the doctrine in Veazie Bank *v.* Fenno a heavier taxation, amounting to destruction, would be the easy way of compelling submission on the part of Spanish corporations to the exigencies of their new masters, the following extract from the same case is interesting:

"This court has had, perhaps, more frequent occasion to assert the inviolability of corporate charters in cases respecting the power of taxation than in any other, and in a long series of decisions has held that a clause imposing certain taxes in lieu of all other taxes, or of all taxes to which the company or stockholders therein would be subject, is impaired by legislation raising the rate of taxation, or imposing taxes other than those specified in the charter."

[1] (1895) 161 U. S. 646, 661, 664.

Then quoting from State Bank of Ohio *v.* Knoop:[1]

"The rate of discount, the duration of the charter, the specific tax agreed to be paid, and other provisions essentially connected with the franchise, and necessary to the business of the bank, cannot, without its consent, become a subject for legislative action."

The Court says further:

"Within the same principle are grants of an exclusive right to supply gas or water to a municipality or to occupy its streets for railway purposes.

"So, if a company be chartered with power to construct and maintain a turnpike, erect toll-gates and collect tolls, such franchise is protected by the Constitution.

"If it be provided in the charter of a bank that the bills and notes of the institution shall be received in payment of taxes or of debts due to the State, such undertaking on the part of the State constitutes a contract between the State and holders of the notes, which the State is not at liberty to break."

The State which granted privileges to the colonial banks in Porto Rico and the Philippines was Spain. By their charters certain property rights were conferred upon them. According to these decisions of "the State" which succeeded to the rights and duties of Spain, it would seem it cannot successfully repudiate the due observance of stipulations so made, especially as in the act of cession of the territory in which these banks are situated it was stipulated that the cession should not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds.

It is evident that this subject might be pursued into all its ramifications to the completion of a volume, but such a treatment would not be in consonance with the purpose of a review.

If this imperfect memorandum suggests a train of reasoning or a subject of investigation to your readers, and awakens in any of them an interest in the problems that are confronting the Judiciary and the Legislative, as well as the Executive, Departments of our country, it will, I trust, have served a useful purpose.

PAUL FULLER.

[1] (1853) 16 How., 369.